

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of
RAYMOND W. CLANTON
LOREN F. SELZNICK

) MM DOCKET NO.93-87
)
) File No. BPH-911216MC
)
) File No. BPH-911216MD
)
)
)
)
)
)

For Construction Permit for a
New FM Station on channel 279A
in El Rio, California

RECEIVED

AUG 23 1993

To: Honorable John M. Frysiak
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO ENLARGE THE ISSUES

Loren Selznick moves to enlarge the issues against Raymond Clanton as follows:

1. Whether Clanton misrepresented the facts or lacked candor with respect to his residence; and
2. Whether, in view of the foregoing, Clanton is basically qualified to be an FCC licensee.

The discovery that is requested to be authorized under the added issues is provided in Appendix A.

Timeliness

This motion is filed within 15 days following notice to the Presiding Judge of the parties' withdrawal of their Joint Petition for Approval of Settlement Agreement. See 47 CFR § 1.229(b). This motion also raises a substantial question of

CHS

material fact that is sufficient to warrant its consideration regardless of timeliness. See 47 CFR § 1.229(c).

Discussion

I. CLANTON MISREPRESENTED MATERIAL FACTS

1. Applicant Ray Clanton, a sole proprietor, proposed full-time integration in his application filed December 16, 1991. See Clanton's FCC Form 301 at Exhibit No. 4. As an enhancement to his integration proposal, Clanton claimed in his 1991 application that he had been a full-time local resident of Camarillo, a town within the proposed service area, since 1973. Id. at 1, attached hereto as Appendix B.

2. After Selznick's competing application was filed, Clanton filed an amendment to his application. In that March 10, 1992 amendment, Clanton acknowledged that he had not, in fact, been a "full time" resident of Camarillo since "about 1986." See Appendix C. He claimed, however, that "since" 1992 he had resided in the area "about 95% of the time." Id.

3. On October 9, 1992, Clanton filed a further amendment. Clanton effectively conceded that his claim to "local residence" was even more attenuated than he previously had reported to the FCC. In that "post-B-cutoff" amendment, Clanton conceded that, since October 1, 1992, he had spent only "40% of the time at his California address shown in the application." See Appendix D.

4. Clanton's two amendments, submitted after a competing application had been filed by Selznick, establish prima facie

that Clanton's 1991 application misrepresented the facts concerning his residence.

5. The question of Clanton's local residence is palpably a "material" one. Local residence is a decisive comparative factor in numerous broadcast licensing cases¹ and may be decisive in this proceeding.²

II. AN INTENT TO DECEIVE CAN BE REASONABLY INFERRED

6. It is now well settled that an intent to deceive the FCC can be inferred where an applicant makes a statement that it knows at the time to be false. See California Public Broadcasting Forum v. FCC, 752 F.2d 670, 679-80 (D.C. Cir. 1985); see also Citizens Committee to Save WEFM v. FCC, 506 F.2d 246, 365-66 (D.C. Cir. 1974) (hearing required on misrepresentation issue even where no proven intent to deceive).

7. Clanton "corrected" his false residence claim only after he knew that his sole competitor did not claim any past residence in the proposed service area. Only when it was "safe", from a comparative standpoint, did Clanton reveal the true facts with respect to his past and present residence. Only when Clanton perceived that he might not have to claim full-time past or present local residence in the service area to win the case did Clanton reveal that he was only a "part time" resident in the

¹ See, e.g., Safe Broadcasting Corporation, 6 FCC Rcd 6548, 6551 (Rev. Bd. 1991).

² It appears that neither applicant in this case will claim a minority preference, a comparative coverage preference or a daytimer preference.

service area. Indeed, only when the hearing was about to be designated did Clanton reveal that:

rather than being a "full-time" resident, he spends less time in the service area than in Arizona.

See Appendix D.

8. Rather than straightforwardly telling the truth, Clanton has parceled out the facts to the FCC in a stingy fashion only when it has served his perceived comparative interests. Such gamesmanship with respect to the facts is not consistent with the FCC's bedrock requirement for "absolute candor" from its regulatees. See Character Policy Statement, 59 RR2d 801, 809 (1986); Richardson Broadcast Group, 7 FCC Rcd 1583 (1992); Maria Ochoa, 7 FCC Rcd 6569, 6571-72 (Rev. Bd. 1992), rev. denied, 8 FCC Rcd 3135 (1993). Even "trivial" deceptions have been grounds for disqualification. See FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946).

9. A substantial question of material fact exists regarding Clanton's representations about his residence. A hearing is required to determine whether Clanton can be relied upon to be absolutely candid with the FCC. See, e.g., Lorain Journal Company v. FCC, 351 F.2d 824, 830 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966); Leflore Broadcasting Company, Inc. v. FCC, 636 F.2d 454, 462 (D.C. Cir. 1965).

CONCLUSION

The requested issues should be ADDED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Thompson", written over a horizontal line.

Robert Lewis Thompson
PEPPER & CORAZZINI
1776 K Street, N.W. Suite 200
Washington, D.C. 20006
(202) 296-0600

Counsel for Loren Selznick

August 23, 1993

Appendix A

Discovery

1. If the motion to enlarge is granted, Clanton shall produce the following documents pursuant to 47 CFR § 1.229(e)(i) and the Administrative Law Judge's order:

a. copies of all drivers licenses, tax filings, voter registration cards and credit card statements' address labels from 1986 to present.

b. copies of representative documents addressed to Clanton at any non-Camarillo, California address during the years 1986 to present.

2. If the motion to enlarge is granted, Clanton should be deposed on the added issues within 30 days after enlargement or, in any event, prior to the October hearing.

RLT/kda
c:\wp\4070\discov

INTEGRATION STATEMENT OF RAYMOND W. CLANTON

Raymond W. Clanton, an individual applicant and 100% owner, will be the general manager of the El Rio FM radio station, working a minimum of 40 hours per week (full time) there. He will be in charge of all aspects of the station's operation, including but not limited to, setting all station policies, hiring and firing personnel, and assuring compliance with all federal and local laws and regulations. He will directly supervise all employees and will have final authority over the entire day-to-day operation of the station. Mr. Clanton will resign any employment he may have so as to be completely free to devote his full time to the radio station. He is a white male and therefore will not claim enhancement credit for female or minority status.

Mr. Clanton will claim enhancement to his integration proposal for his residence at the following locations within his proposed station's 1 mV/m contour:

| | |
|----------------|---|
| 1973 - 1975 | 314 Rosewood Avenue, Camarillo, Ca. |
| 1975 - 1977 | 984 Trueno Avenue, Camarillo, Ca. |
| 1977 - 1986 | 833 West Highland Drive, Camarillo, Ca. |
| 1986 - 1987 | 1767 Calle Rocas, Camarillo, Ca. |
| 1987 - present | 633 Lantana, Camarillo, Ca. |

Mr. Clanton's civic involvement in El Rio and his proposed station's 1 mV/m contour includes counseling students and fundraising participation from 1987 to present at Read, Write and Spell, Inc., an organization designed to assist individuals with learning disorders. He counsels students on topics including, but not limited to, continuing education, communication skills and job placement. In addition to his involvement with Read, Write and Spell, Inc., he provides voluntary counseling and consulting services to various people on topics including, but not limited to, building construction, starting a new business, financial investments, property and business management, obtaining loans, computer

~~420310MG~~

LAW OFFICES

MILLER & MILLER, P. C.

SUITE 760

1990 M STREET, NW

WASHINGTON, DC 20036

(202) 785-2720

March 10, 1992

APPENDIX C-page one

DUPLIC
Selznick - Clanton 98

MAILING ADDRESS

P.O. BOX 33003

WASHINGTON, DC 20033

15993/000
9.002
042

JERROLD D. MILLER
SAMUEL MILLER
JOHN S. NEELY

Secretary
Federal Communications Commission
Washington, DC 20554

RE: Raymond W. Clanton
El Rio, California
BPH-911216MC

ATTN: FM Branch

Dear Madam Secretary:

Filed herewith in triplicate on behalf of Raymond W. Clanton, applicant for a new FM station at El Rio, California, (File No. BPH-911216MC) is an amendment to his pending application.

Please address any questions concerning this matter to the undersigned.

Sincerely,

John S. Neely

ENC.

RECEIVED

MAR 10 1992

Federal Communications Commission
Office of the Secretary

File No. BPH-911216MC
El Rio, California

AMENDMENT

The application of Raymond W. Clanton for a new FM station at El Rio, California, File No. BPH-911216MC, is amended to show the following:

From about 1986 until 1988 Raymond W. Clanton has resided within his proposed 1 mV/m service area approximately 85% of the calendar year. Between 1988 and January 1992 he resided within his proposed 1 mV/m service area approximately 70% of the time. Since February 1992 he has resided within his proposed 1 mV/m service contour about 95% of the time.

Attached FAA Determination of No Hazard to Air Navigation for Clanton's Proposed Construction.

RAYMOND W. CLANTON

3-2-92
Date

Raymond W. Clanton

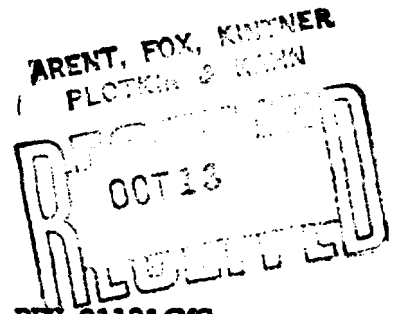
RECEIVED

MAR 10 1992

Federal Communications Commission
Office of the Secretary

APPENDIX D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In re Applications of)

RAYMOND W. CLANTON)

For Construction Permit)
for a New FM Station in)
El Rio, California)

File No. BPR-911216MC

To: Mass Media Bureau

PETITION FOR LEAVE TO AMEND

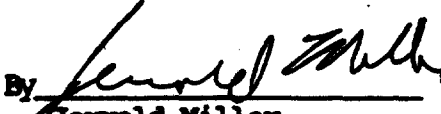
Raymond W. Clanton ("Clanton"), by his attorney, hereby petitions for leave to amend his pending application, so as to submit the attached amendment. In support thereof, the following is shown.

Under Section 1.65 of the Commission's rules, each applicant is required to keep its application current and report all changes in information previously supplied to the Commission. The amendment responds to this requirement, as it provides new information regarding the residence of the applicant. Good cause thus obtains for acceptance of the amendment. It is required to be filed. It will not improve the applicant's comparative position. It will not disrupt the Commission's processes, nor require the addition of hearing issues. It is filed with due diligence, coming less than 30 days since the change occurred.

Accordingly, the attached amendment should be accepted.

Respectfully submitted,

RAYMOND W. CLANTON

By 
Jerrold Miller
His Attorney

October 9, 1992


Miller & Miller, P.C.
P. O. Box 33003
Washington, DC 20033

File No. BPH-911216MC
El Rio, California

AMENDMENT

The application of Raymond W. Clanton, individual applicant for a new FM station at El Rio, California, File No. BPH-911216MC, is amended to state that, effective approximately October 1, 1992, Mr. Clanton will be spending about 40% of the time at his California address shown in the application. He will be out of the proposed service area the remaining 60% of the time. Mr. Clanton will establish his permanent residence in El Rio upon grant of his application.

10-2-92
Date


Raymond W. Clanton

CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Motion to Enlarge the Issues" was served by prepaid, First Class U.S. Mail on this 23th day of August 1993, on the following:

* Honorable John M. Frysiak
Room 223
Federal Communications Commission
2000 L Street, NW
Washington, DC 20036

* Paulette Laden, Esq.
Hearing Branch -- Room 7212
Federal Communications Commission
2025 M Street, NW
Washington, DC 20054

Jerrold D. Miller, Esq.
Miller & Miller, P.C.
1990 M Street, NW
Suite 760
Washington, DC 20036


Karen D. Anderson

* By Hand

RLT/kda
c:\wp\4070\enlarge.fil